

20-56357

IN THE UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

**HARVEST ROCK CHURCH, INC., and  
HARVEST INTERNATIONAL  
MINISTRY, INC., itself and on behalf of its  
member churches in California,**

Plaintiffs,

v.

**GAVIN NEWSOM, in his official capacity  
as Governor of the State of California,**

Defendant.

On Appeal from the United States District Court  
for the Central District of California

No. 2:20-cv-06414JGB(KKx)  
The Honorable Jesus G. Bernal, Judge

**DEFENDANT-APPELLEE'S SUPPLEMENTAL BRIEF  
(SECOND) IN OPPOSITION TO EMERGENCY  
MOTION FOR INJUNCTION PENDING APPEAL**

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## **SUPPLEMENTAL BRIEF**

The Court directed the parties to file supplemental briefs to address “the impact on this case, if any, of the Los Angeles County Department of Public Health’s order of December 19, 2020.” 9th Cir. Dkt. 13. The Court also ordered the parties to address five specific questions. Defendant-Appellee Governor Gavin Newsom responds to the Court’s queries herein.

### **I. LOS ANGELES COUNTY’S PUBLIC HEALTH ORDERS**

LA County’s December 19 Order has no impact on this case because it has been superseded. In addition, even while in effect, the Order did not excuse compliance with the State’s directives, and nothing in that Order undermines the State’s demonstration that its restrictions on worship services are narrowly tailored.

The December 19 Order was superseded by a modified order issued on December 29 (attached hereto). The modified order makes clear that the County’s orders do not supersede any State’s Orders:

This Revised Temporary Order is consistent with the provisions in the Governor’s Executive Order N-60-20 and the State Public Health Officer’s May 7, 2020 Order, that local health jurisdictions may implement or continue more restrictive public health measures in the jurisdiction if the local health officer believes conditions in that jurisdiction warrant them. *Where a conflict exists between this Order and any State public health order related to controlling the spread of COVID-19 during this pandemic, the most restrictive provision controls*, unless the County of Los Angeles is subject to a court order requiring it to act on, or enjoining it from enforcing, any part of this Revised Temporary Order.[]

Attachment, at pp. 3-4 (emphasis added). The modified order also explicitly recognizes that LA County has “has no jurisdiction over and *does not affect the State Public Health orders.*” *Id.* at p. 4 (emphasis added).

Accordingly, LA County’s currently operative COVID-19-related public health orders have no effect on the restrictions on worship services imposed by the State. The Blueprint for a Safer Economy prohibits indoor worship services in Tier 1 counties, including Los Angeles County, and the Regional Stay-At-Home Order, which is currently in effect in Los Angeles County, also prohibits indoor worship services.

In addition, to the extent LA County previously purported to supersede these prohibitions, its order was without legal effect, as the December 29 modification implicitly acknowledges. The prior December 19 version of the LA County’s Order provided, with respect to houses of worship, that in-person services may take place both indoors and outdoors subject to physical distancing, mask-wearing, and other requirements. Dist. Ct. Dkt. 74-1 at 3-4. It also stated, correctly, that “County Health Officer Orders may not be less restrictive than Orders issued by the State Public Health Officer,” *id.* at 1, but it went on to assert that “Except for places of worship, where a conflict exists between this Order and any state public order relating to controlling the spread of COVID-19 during this pandemic, the most restrictive provision controls,” *id.* at 3-4. The exception in this latter

statement was incorrect as a matter of law. Under the California Constitution, cities and counties ““may make and enforce within [their] limits all local, police, sanitary, and other ordinances and regulations *not in conflict with general laws.*”” *T-Mobile W. LLC v. City & Cty. of San Francisco*, 6 Cal. 5th 1107, 1116, 438 P.3d 239, 242–43 (2019) (quoting Cal. Const. art. XI, § 7) (emphasis added). “[L]ocal legislation that conflicts with state law is void.” *Id.* (citations omitted). Thus, the LA County Order could permit, at most, the resumption of indoor worship subject to various restrictions *as a matter of local law*. But it did not and could not supersede either the Blueprint or the Regional Stay At Home Order.

Nor did anything in LA County’s December 19 Order purport to make a public health-based determination that indoor worship is safe so long as physical distancing, mask-wearing, and other precautions are taken. Rather, the December 19 Order made clear that it was solely based on the County’s legal conclusion that *Roman Catholic Diocese of Brooklyn v. Cuomo*, 141 S. Ct. 63 (2020) and other authorities required it to allow indoor worship services. Accordingly, the Order’s purported (and now withdrawn) allowance of in-person worship services in LA County in no way suggests that other precautions (like capacity limits, masking, and distancing) represent a less restrictive alternative to the State’s restrictions. As the State’s experts have explained, precautions such as distancing, masks, and cleaning protocols are “good . . . but insufficient” to mitigate the risk of COVID-19

transmission at indoor gatherings such as worship services in counties where the disease is “widespread” (i.e. Tier 1 counties) or in counties where hospital intensive care unit capacity is less than 15% (i.e. counties subject to the Regional Stay-At-Home Order). Watt Decl. ¶¶ 98-100 (Dist. Ct. Dkt. 66-1); *id.* ¶¶ 44, 46; Rutherford Decl. ¶¶ 92, 101-06 (Dist. Ct. Dkt. 66-2); Stoto Decl. ¶¶ 32-26 (Dist. Ct. Dkt. 66-3); *see also* 9th Cir. Dkt. 7-2 at 12-13, 32-34.<sup>1</sup>

Finally, it makes no difference that the December 19 Order pointed to rulings in *Roman Catholic Diocese*, 141 S. Ct. 63, and *Burfitt v. Newsom*, No. BCV-20-102267 (Kern Cty. Super Ct. Dec. 10, 2020). Dist. Ct. Dkt. 74-1 at 4 n.1. The County Public Health Officer has no authority to declare State law unconstitutional

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<sup>1</sup> Plaintiffs assert that the State has “conceded” that its experts are not qualified to provide the opinions asserted in their declarations. *E.g.* 9th Cir. Dkt. 14 at 3; 9th Cir. Dkt. 8 at 22. That is incorrect. At oral argument on a prior motion, far from conceding this point, counsel for the State stated that one of its experts, Dr. James Watt, Chief of the Division of Communicable Disease Control at CDPH, “is qualified to opine on [] how this virus transmits . . . the way that this virus transmits in indoor gatherings like a church service.” *See* <https://www.youtube.com/watch?v=XdkbgyNFbWA&t=1820s> (26:45). Indeed, the Court rejected any such concession, relying on Dr. Watt’s testimony and noting that “Harvest Rock did not offer a competing expert or any other evidence to rebut Dr. Watt’s opinion that congregate events like worship services are particularly risky.” *Harvest Rock Church, Inc. v. Newsom*, 977 F.3d 728, 730-31 (9th Cir. 2020), *vacated*, 2020 WL 7061630 (U.S. Dec. 3, 2020); *see also* Dist. Ct. Dkt. 77 (relying on Dr. Watt’s testimony among other of the State’s experts). Plaintiffs fail to show that the Court committed error in doing so. Moreover, they point to nothing wrong with the credentials or qualifications of the State’s experts nor to any flaws in the opinions that they offer concerning the risk of transmitting COVID-19 during indoor gatherings such as worship services.

or otherwise unenforceable. Only a court could do that, and no court has enjoined the State's restrictions as violative of the Free Exercise Clause.<sup>2</sup> For this reason as well the LA County's orders have no impact on the State's demonstration that its restrictions on worship services and other activities are narrowly tailored to serve the compelling interest in slowing the spread of COVID-19.

## II. THE REGIONAL STAY-AT-HOME ORDER

It is unclear if Plaintiffs are challenging the Regional Stay-at-Home order. When Plaintiffs moved for a temporary restraining order and/or preliminary injunction in the district court, they did not mention the Regional Stay-at-Home order. *See* Dist Ct. Dkt. 58-1. Nor did they present any evidence particular to the Regional Stay-at-Home order. Moreover, in their motion on appeal, Plaintiffs once again did not mention the Regional Stay-at-Home Order. *See* 9th Cir. Dkt. 3-1.

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<sup>2</sup> As Defendant explained in his Opposition, and as the district court held below, *Roman Catholic Diocese* does not render the State's Orders unconstitutional. Dkt. 7-2 at 18-23; *see also id.* at 23-25. As for *Burfitt*, in that case a Kern County Superior Court stated it would issue a preliminary injunction (but has not yet done so) under the California Constitution's free exercise provision in favor of the particular plaintiff in that case, but not across the entirety of LA County or any of the other counties at issue in that case. *Burfitt v. Newsom*, No. BCV-20-102267 (Dec. 10, 2020). The Superior Court, however, relied on the California Constitution's free exercise provision, which the Eleventh Amendment bars Plaintiffs from invoking here. *Pennhurst State Sch. & Hosp. v. Halderman*, 465 U.S. 89, 124-25 (1984). In addition, because the ruling in *Burfitt* is based on multiple errors, the State plans to appeal once the preliminary injunction order is actually issued.



The Regional Stay-at-Home Order, however, has been discussed by Defendant. For example, in explaining the current restrictions on all activities in California to the district court, Defendant mentioned the Regional Stay-at-Home order, Dist. Ct. Dkt. 66 at 13, and provided a copy of it, Dist. Ct. Dkt. 67 at 123-126 (Ex. 12). The district court, in its order denying Plaintiffs relief, also mentioned the Regional Stay-at-Home Order. Dist. Ct. Dkt. 77 at 4-5, 8. And to provide this Court with an accurate description of the current restrictions in California, Defendant mentioned the order in its briefing here. 9th Cir. Dkt. 7-2 at 14.

### **III. THE STATE’S INDOOR SINGING AND CHANTING BAN**

Plaintiffs briefly mentioned the indoor singing and chanting ban in their district court motion, Dist. Ct. Dkt 58-1 at 10, and also briefly discuss the ban in their motion in this Court. Pls.’ Mot. at ii, 5. Plaintiffs, however, did not present any analysis or argument supporting a challenge to this restriction. Indeed, the State’s ban against indoor singing and chanting is neutral and generally applicable because it applies across-the-board to all indoor gatherings, Dist. Ct. Dkt. 67 at 72, and singing and chanting at indoor congregate events create an exceptionally high risk of transmission, Watt Decl. ¶¶ 45-46; *see also* Dist. Ct. Dkt. 77 at 9 (finding that “singing and shouting, which expel more viral droplets, are riskier activities than sitting silently”). Nothing in *Roman Catholic Diocese* suggests otherwise.

Indeed, as Justice Gorsuch appeared to acknowledge in his concurring opinion, the Constitution allows a State to require churches to take reasonable precautions, including “forgoing singing.” *Roman Catholic Diocese*, 141 S. Ct. at 69 (Gorsuch, J., concurring).

Plaintiffs’ only argument as to the indoor singing and chanting ban is that “No similar restriction is placed on singing ‘Happy Birthday’ in a restaurant or Christmas carols in a mall.” Pls.’ Mot. at 5. Plaintiffs are wrong. No one can sing “Happy Birthday” indoors at a restaurant as these are closed in Tier 1 counties and under the Regional Stay-at-Home order. Dist. Ct. Dkt. 67 at 65; *see also* Dist. Ct. Dkt. 67 at 72. And singing in restaurants and gathering at malls to sing Christmas carols would be prohibited under the guidance that applies across-the-board to all indoor gatherings and prohibits singing. *Id.*

#### **IV. NUMBER OF HARVEST ROCK’S CHURCHES IN LOS ANGELES COUNTY**

Defendant does not have information on the number of Harvest Rock’s member churches operating within or outside of Los Angeles County. Plaintiffs did not include this information in their complaint and only asserted that their organization includes 162 member churches throughout California. Dist. Ct. Dkt. 1 ¶¶ 41, 54. Plaintiffs submitted a list of its churches to the district court in a declaration attached to its reply brief in support of its preliminary injunction

motion, Dist. Ct. Dkt. 68-2, but Defendant objected that the declaration was improperly submitted, Dist. Ct. Dkt. 71.

### CONCLUSION

The Court should deny Plaintiffs' Motion.

Dated: December 31, 2020

Respectfully Submitted,

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### **CERTIFICATE OF COMPLIANCE**

The undersigned certifies that this brief complies with the length limits permitted by the Court's Order. The brief is 1,899 words excluding the portions exempted by Rule 32(f). The brief's type size and type face comply with Fed. R. App. P. 32(a)(5) and (6).

Dated: December 31, 2020

/s/ Todd Grabarsky  
TODD GRABARSKY

### **CERTIFICATE OF SERVICE**

I hereby certify that on December 31, 2020, I electronically filed the foregoing document with the Clerk of the Court by using the CM/ECF system.

I certify that all participants in the case are registered CM/ECF users and that service will be accomplished by the CM/ECF system.

Dated: December 31, 2020      /s/ Todd Grabarsky  
TODD GRABARSKY

**REVISED TEMPORARY TARGETED SAFER AT HOME HEALTH OFFICER ORDER FOR  
CONTROL OF COVID-19: TIER 1 SUBSTANTIAL SURGE UPDATED RESPONSE | 12/29/2020**

## **REVISED TEMPORARY TARGETED SAFER AT HOME HEALTH OFFICER ORDER FOR CONTROL OF COVID-19:**

### ***TIER 1 SUBSTANTIAL SURGE UPDATED RESPONSE***

Revised Order Issued: December 29, 2020

**The Revised Order is effective 11:59PM (PST) on December 29, 2020 and will remain in effect for as long as the State Public Health Officer's Regional Stay At Home remains in effect in the Southern California Region.**

**Please read this Order carefully. Violation of or failure to comply with this Order is a crime punishable by fine, imprisonment, or both. (California Health and Safety Code §120295; Los Angeles County Code § 11.02.080.)**

#### **SUMMARY OF THE TEMPORARY ORDER:**

This Revised Temporary Targeted Safer At Home Order for Control of COVID-19: Tier 1 Substantial Surge Updated Response (Revised Temporary Order) is issued to temporarily replace both the most recently issued Temporary Order and Reopening Safer At Work And In The Community For Control of COVID-19 Order (Order) issued by the County of Los Angeles Health Officer (Health Officer). This Revised Temporary Order will be effective from 11:59pm (Pacific Standard Time (PST)) on December 29, 2020 and will remain in effect for as long as the State Public Health Officer's Regional Stay At Home remains in effect in the Southern California Region.

This Revised Temporary Order has been updated and is issued as a response to the sustained and substantial rise in COVID-19 cases, hospitalizations and deaths. This Revised Temporary Order has been revised to align and comply with the State's December 3, 2020 Regional Stay At Home Order, as well as the Supplement to the Regional Stay At Home Order issued December 6, 2020. County Health Officer Orders may not be less restrictive than Orders issued by the State Public Health Officer.

The County is part of the Southern California Region (Region). Over the last seven (7) calendar days, the County of Los Angeles is averaging 13,819 newly diagnosed COVID-19 cases per day. Between November 13, 2020-December 27, 2020, hospitalizations of confirmed COVID-19 patients have increased by 474% to 6,815. In addition, the adult ICU bed admissions in the Southern California Region rose. And, per the California Department of Public Health, there is no additional adult Intensive Care Unit (ICU) bed capacity within the Region. Because of both the rapid continuing increases in new cases and test positivity rates within the County and the Region and the lag between case identification and hospitalizations, the Health Officer expects both the



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number of new cases and hospitalizations, including adult ICU admissions in the Region, to continue to increase.

Per the State Public Health Officer, current projections show that without additional intervention to slow the spread of COVID- 19, the number of available adult Intensive Care Unit (ICU) beds in the State of California will be at capacity in mid-December. ICU beds are a critical resource for individuals who need the most advanced support and care and the ability to add additional ICU capacity is limited by the lack of available ICU nurses and physicians as a result of the nationwide surge in hospitalizations and ICU admissions.

Without additional public health interventions and widespread public adherence to the personal preventive actions to avoid being exposed to this virus and spreading it to others, the high levels and rate of rise in both cases and hospitalizations, if either continues, are at risk of overwhelming the ability of hospitals to deliver healthcare to people suffering from COVID-19 and from other illnesses requiring hospital care.

This Revised Temporary Order is issued to ensure that County of Los Angeles (County) residents remain in their residences except as necessary to conduct activities specifically permitted in this order, to limit close contact with others outside their household in both indoor and outdoor spaces and to further reduce the risk of community transmission of COVID-19 resulting from the unprecedented surge of new daily cases. This Revised Temporary Order is issued to reduce capacity at sites where non-household members interact. Limiting interactions among non-household members, especially in places where persons are in close proximity without a face covering or mask, is essential to slowing the spread of COVID-19. It is imperative that all persons and businesses within in the County take personal responsibility and follow all restrictions and infection control precautions required by this Revised Temporary Order. Changes from the previous Temporary Order are highlighted.

This Revised Temporary Order is effective within the County of Los Angeles Public Health Jurisdiction, defined as all cities and unincorporated areas within the County of Los Angeles, with the exception of the cities of Long Beach and Pasadena that must follow their respective City Health Officer orders and guidance. This Revised Temporary Order is effective 11:59PM December 29, 2020 and will remain in effect for as long as the State Public Health Officer's Regional Stay At Home remains in effect in the Southern California Region.



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**UNDER THE AUTHORITY OF CALIFORNIA HEALTH AND SAFETY CODE SECTIONS 101040,  
101085, AND 120175, THE COUNTY OF LOS ANGELES HEALTH OFFICER ORDERS:**

1. This Revised Temporary Order replaces both the most recently issued Temporary Order and Reopening Safer At Work And In The Community For Control of COVID-19 Order (Order) issued by the County of Los Angeles Health Officer (Health Officer). That Order is suspended until the expiration of this Revised Temporary Order. This Revised Temporary Order is issued to slow the current high rates of COVID-19 community transmission and hospitalizations within the County. The Health Officer will continue to assess COVID-19 indicators within the County and the effectiveness of this Revised Temporary Order on an ongoing basis and determine, after consultation with the Board of Supervisors, whether this Revised Temporary Order needs to be modified or extended if the public health risk associated with COVID-19 increases in the future.
2. This Revised Temporary Order's intent is to continue to ensure that County residents remain in their residences except as necessary to conduct activities as required by law or as specifically permitted in this order, to limit close contact with others outside their household in both indoor and outdoor spaces and to further reduce the increased risk of community transmission of COVID-19 resulting from the unprecedented surge of new daily cases. All persons who can telework or work from home should continue to do so as much as possible during this pandemic. The public's adherence to sustained Social (Physical) Distancing, consistent and correct use of face coverings/masks, and other infection control measures will slow the spread of COVID-19 and diminish its impact on the delivery of critical healthcare services. Failure to comply with any of the Revised Temporary Order's provisions constitutes an imminent threat and menace to public health, and a public nuisance, and is punishable by fine, imprisonment or both.
  - a) This Revised Temporary Order does not supersede any stricter limitation imposed by a local public entity within the County of Los Angeles Public Health Jurisdiction.
  - b) This Revised Temporary Order is consistent with the provisions in the Governor's Executive Order N-60-20 and the State Public Health Officer's May 7, 2020 Order, that local health jurisdictions may implement or continue more restrictive public health measures in the jurisdiction if the local health officer believes conditions in that jurisdiction warrant them. Where a conflict exists between this Order and any State public health order related to controlling the spread of COVID-19 during this pandemic, the most restrictive provision controls, unless the County of Los Angeles





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is subject to a court order requiring it to act on, or enjoining it from enforcing, any part of this Revised Temporary Order.<sup>1</sup>

3. All persons within the County Public Health Jurisdiction must stay home, except to travel to and from Essential Businesses, to work at or provide service to a Healthcare Operation or Essential Infrastructure, to work at, perform or obtain services from an Essential Governmental Function, to engage in Essential Activities, or to participate in permitted individual or household activities, while practicing social distancing and using face coverings/masks as described below.
  - a) Nothing in this Revised Temporary Order prohibits persons living together as a single household in a household or living unit ("household") from engaging in permitted activities together. For purposes of this Revised Temporary Order, a "household" shall not include institutional group living situations such as dormitories, fraternities, sororities, monasteries, convents, or residential care facilities, nor does it include such commercial group living arrangements as boarding houses, hotels, or motels.<sup>2</sup>
  - b) All public and private gatherings and events with people from more than one household are not permitted except for outdoor faith-based services and outdoor political expression, and as provided in Paragraph 9 of this Revised Temporary Order.
  - c) People leaving their residences must strictly comply with the Social (Physical) Distancing, as specified in guidance or protocols established by the County Department of Public Health. This Revised Temporary Order requires all persons wear a face covering or mask over both the nose and mouth whenever they leave their place of residence and are or can be in contact with or walking near or past others who are non-household members in both public and private places, whether indoors or outdoors. This includes wearing a face covering or mask when patronizing a business. Wearing a face covering or mask reduces the risk of transmission to others from people who do not have symptoms and do not know they are infected. Wearing a face covering or mask has also been shown to provide

<sup>1</sup> For example, see *Burfitt v. Newsom*, No. BCV-20-102267 (Kern County Sup. Ct. Dec. 10, 2020). Further this Revised Temporary Order is issued in and for the County of Los Angeles only, and has no jurisdiction over and does not affect the State Public Health orders.

<sup>2</sup> Los Angeles County Code, Title 22. §22.14.060 - F. Family definition. (Ord. 2019-0004 § 1, 2019.)

[https://library.municode.com/ca/los\\_angeles\\_county/codes/code\\_of\\_ordinances?nodeId=TIT22PLZO\\_DIV2DE\\_CH22.14DE\\_22.14.060F](https://library.municode.com/ca/los_angeles_county/codes/code_of_ordinances?nodeId=TIT22PLZO_DIV2DE_CH22.14DE_22.14.060F)



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some protection for the wearer. The use of face coverings is commonly referred to as “source control.”

- d) Persons and businesses within the County of Los Angeles Public Health Jurisdiction are required to follow the local COVID-19 infection control protocols and guidance provided by the County Department of Public Health. In instances where the County has not provided a specific guidance or protocol, specific guidance or protocols established by the State Public Health Officer shall control. All businesses must comply with the County Public Health Protocol applicable to that business sector.
  - i. In the event that an owner, manager, or operator of any business knows of three (3) or more cases of COVID-19 among their employees within a span of 14 days, the employer must report this outbreak to the Department of Public Health at (888) 397-3993 or (213) 240-7821 or online at [www.redcap.link/covidreport](http://www.redcap.link/covidreport).
  - ii. In the event that an owner, manager, or operator of any business is informed that one or more employees of the business has tested positive for, or has symptoms consistent with COVID-19 (case), the employer must have a protocol to require the case(s) to isolate themselves at home and require the immediate self-quarantine of all employees that had a workplace exposure to the case(s).
- e) All permitted activities with individuals of other households and all activities conducted outside the residence, lodging, or temporary accommodation with members of other households must cease, between 10PM and 5AM (PST) except for those activities associated with the operation, maintenance, or usage of an Essential Business, Healthcare Operation, Essential Infrastructure, Essential Government Function, Places of Worship for faith-based services or as required by law. This Revised Temporary Order does not apply to persons experiencing homelessness. Nothing in this Revised Temporary Order prevents any number of person from the same household from leaving their residence, lodging or temporary accommodation, as long as they do not engage in any interaction with (or otherwise gather with) any number of persons from any other household, except as specifically permitted herein.
- f) Persons arriving in the County of Los Angeles from other states or countries on non-essential travel, including returning County of Los Angeles or California



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residents, must practice self-quarantine for 10 days after arrival. Such persons must limit their interactions to those within their immediate household (unless they are also under quarantine). If such quarantined person develops symptoms of or tests positive for COVID-19 during the quarantine period, they must isolate themselves as required by the Health Officer's Order for Isolation.

4. This Revised Temporary Order incorporates by reference the following provisions of the recently issued Reopening Safer At Work And In The Community For Control of COVID-19 Order issued by the County Health Officer on November 25, 2020: Paragraphs 4, 5, 6, 10, 11, 12 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, and 26, and Appendices A, B, B-1, C, D, E, G, I, J, K, L, N, O, P, T1, T2, and U. To the extent that this Revised Temporary Order conflicts with any incorporated paragraphs or appendices, this Revised Temporary Order controls.
5. The Health Officer orders the closure of the following businesses, recreational sites, commercial properties, and activities, where more frequent and prolonged person-to-person contacts are likely to occur:
  - a) Lounges and nightclubs;
  - b) Bars and craft distilleries that possess a valid low risk restaurant public health permit issued by the County of Los Angeles, and breweries and wineries for in-person onsite food and beverage service.
  - c) Public entertainment venues: movie theaters, live performance theaters, concert venues, theme parks, and festivals;
  - d) Family entertainment centers for all activities;
  - e) All restaurants, but only for indoor and outdoor in-person onsite dining until further notice;
  - f) Cardrooms, satellite wagering facilities, and racetrack onsite wagering facilities until further notice;
  - g) Indoor playgrounds; Outdoor playgrounds may remain open to facilitate physically distanced personal health and wellness through outdoor exercise following County Public Health Protocols for Playgrounds. Playgrounds located on schools that remain open for in-person instruction, and not accessible by the general public, may remain open and must follow County and State Protocols for Schools.



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- h) Museums, zoos and aquariums are closed to the public until further notice;
  - i) Hot tubs, steam rooms and saunas not located on a residential property;
  - j) Small water vessel charters and outdoor equipment rental;
  - k) Personal Care Services. Personal Care Establishments include hair salons, nail salons, barbershops, esthetic, skin care, waxing, electrology, body art professionals, tattoo parlors, and piercing shops, tanning salons and massage therapy (in non-healthcare settings). Personal Care Services do not include medical massage that is done based on a referral by a physician or chiropractor.
  - l) All public and private events and gatherings, unless specifically allowed by this Order.
6. All Essential Businesses, as defined in Paragraph 18 of the November 25, 2020 Reopening Safer at Work Order, unless specific modifications are required by this Revised Temporary Order, may remain open to the public and conduct normal business operations, provided that they implement and maintain the Social (Physical) Distancing Protocol. All Essential Businesses must comply with the applicable County Public Health Protocol(s) for its business sector. An Essential Business' owner, manager, or operator must prepare and post a Social (Physical) Distancing Protocol and any other applicable County Public Health Protocol for each facility or office located within the County of Los Angeles Public Health Jurisdiction and must ensure that the Essential Business meets all other requirements of all applicable protocols and the Social (Physical) Distancing Protocol.
7. Lower-Risk Businesses are businesses that are not specified in Paragraph 6 of this Revised Temporary Order, and not defined as an Essential Business in Paragraph 18 of the most recent Order. There are four categories of Lower-Risk Businesses: (1) retailers ("Lower-Risk Retail Businesses"), (2) manufacturing and logistics sector businesses that supply Lower-Risk Retail Businesses, (3) Non-Essential office-based businesses, and (4) Indoor Malls and Shopping Centers. These four categories of Lower-Risk Businesses may be open subject to the following conditions:
- a) **Lower-Risk Retail Businesses** that are open for indoor operations must limit indoor capacity to 20% of maximum occupancy. Lower-Risk Retail Businesses must conduct entrance metering of customers. No eating or drinking inside the store. Additionally, special hours should be instituted for seniors and others with chronic conditions or compromised immune systems. Lower-Risk Retail Businesses, which are non-essential, must close for indoor retail operations



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between the hours of 10:00 PM – 5:00 AM (PST). Lower-Risk Retail Businesses must post and follow County Public Health Protocol, incorporated by reference as **Appendix B**.

- b) For any **non-retail Lower-Risk Business**, that is a manufacturing and logistics sector business that supplies Lower-Risk Retail Businesses, the owner, manager, or operator must implement and post the required County Public Health Protocol, applicable to the business type or location, incorporated by reference as **Appendix C**, and must meet all other requirements of the Social (Physical) Distancing Protocol. All employees must wear a face covering or mask over both the nose and mouth at all times while present at work. A face covering must be worn when employees are or can be in contact with or walking near or past others who are non-household members in both public and private places, whether indoors or outdoors.
- c) For any **Non-Essential office-based business**, all indoor portions and operations must cease in-person operations until further notice. Non-essential office-based businesses may operate via telework and for Minimum Basic Operations only. Essential Businesses, Healthcare Operations, or Essential Infrastructure whose operations require that employees operate from an office worksite must require employees to telework to the extent feasible and any in-person operations must be in accordance with the County Public Health Reopening Protocol Office-Based Worksites, incorporated by reference as **Appendix D**.
- d) **Essential office-based businesses** that are open for indoor operations must limit indoor capacity to 25% of maximum occupancy, and must comply with County Public Health Protocols for Office-Based Worksites, incorporated by reference as **Appendix D**. This restriction does not apply to Healthcare Operations, Essential Infrastructure, and Essential Government Functions.
- e) **Indoor Malls and Shopping Centers**, defined as: A building with (7) or more sales or retail establishments with adjoining indoor space, (including indoor swap meets) may be open at up to 20% of overall mall or shopping center capacity. Indoor Malls and Shopping Centers must conduct entrance metering of customers. Additionally, special hours should be instituted for seniors and others with chronic conditions or compromised immune systems. Higher-risk businesses located within an Indoor Mall or Shopping Center as listed in Paragraph 6 of this Revised Temporary Order must remain closed. Food court dining areas and specified common areas located within an Indoor Mall or Shopping Center must remain





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closed to the public until further notice. Members of the public may not consume food or beverages inside the Indoor Mall or Shopping Center. Outdoor seating is closed to the public. Indoor Malls or Shopping Centers must close between the hours of 10:00 PM–5:00 AM (PST). All essential businesses with an entrance accessible by the public at the exterior of an Indoor Mall or Shopping Center may remain open during those hours in accordance with the limitations set forth in this Revised Temporary Order. The owner or operator of the Indoor Mall or Shopping Center must prepare, implement and post the required County Public Health Protocols for Shopping Center Operators, incorporated by reference as **Appendix E**.

8. The following sectors, business, and activities may remain open while adhering to the required workplace and operational modifications, and subject to the following conditions:
  - a) **Music, Film and Television Production.** Operations for music, film and television production must prepare, implement and post the required County Public Health Protocol for Music, Film and Television Production, incorporated by reference as **Appendix J**, as well as abide by applicable industry-generated protocols. Workers supporting these entertainment industries, studios, and other related establishments such as establishments that provide content for professional broadcast are considered essential by the State.
  - b) **Day camps.** Day camp owners and operators must implement and post the required County Public Health Protocol for Day Camps, incorporated by reference as **Appendix K**. Day camps must close in-person operations between the hours of 10:00 PM – 5:00 AM (PST). Day Camps with a COVID-19 outbreak (3 or more cases within a 14-day period) must close for 14 days.
  - c) **Fitness facilities.** Fitness facilities, including private gymnasiums, may be open for outdoor operations only at 50% maximum outdoor capacity. The indoor portions of Fitness facilities are closed to the public until further notice. The owner, manager, or operator of fitness facilities must prepare, implement and post the required County Public Health Protocol for Gyms and Fitness Establishments, incorporated by reference as **Appendix L**. Fitness facilities must close in-person operations between the hours of 10:00 PM – 5:00 AM (PST).
  - d) [Intentionally omitted.]



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- e) **Professional sports without audiences.** Professional sports teams and franchises may continue operations and competitions without audiences. The owner, manager, or operator of professional sports teams and franchises must prepare, implement and post the required County Public Health Protocol for Professional Sports Leagues and Facilities Opening for Training Sessions and Spectator-Free Events, incorporated by reference as **Appendix N**, as well as abide by applicable industry-generated protocols. Workers supporting operations by professional sports leagues and facilities are considered essential by the State. Professional sports teams and franchises must conclude competitions and other in-person operations by 10:00 PM and cease operations between the hours of 10:00 PM – 5:00 AM (PST).
- f) **Campgrounds, RV Parks and associated outdoor activities.** Campgrounds and recreational vehicle parks may remain open. Recreational overnight stays at campgrounds are prohibited, unless used for COVID-19 mitigation and containment measures, treatment measures, providing accommodation for essential workers or those displaced as a result of fire or other emergency, or providing housing solutions, including measures to protect homeless populations. The owner, manager, or operator of campgrounds and RV Parks must prepare, implement and post the required County Public Health Reopening Protocol for Campgrounds, RV parks and Cabin Rental Units, incorporated by reference as **Appendix O**.
- g) **Schools (K-12) and School Districts.** The County Public Health Officer requires all public and private schools (K-12) and school districts within the County of Los Angeles to conduct distance learning. Since September 14, 2020, K-12 schools may offer in-school services for a small, stable cohort of students with Individualized Education Programs (IEPs) or English Learners (ELs) needing assessments and/or specialized in-school services, with priority given to students with disabilities. Other prioritized groups for in person support and services include students not participating in distance learning, students at risk of abuse or neglect, foster youth, and students experiencing homelessness. Permissible in-person specialized services that require cohorting of students, must limit the maximum stable cohort size to twelve (12) students and two (2) staff (not including aides assigned to children with special needs), and adhere to all provisions for safe opening of schools, as outlined in **Appendix T1: Reopening Protocols for K-12 Schools**. Schools must limit the number of students with IEPs and ELs, and other prioritized students allowed at any one time on campus for essential assessments and/or specialized in-school services



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to 25% or less of the total student body. In addition, Schools may reopen TK-2<sup>nd</sup> Grades for classroom instruction with a waiver application approved by the County Department of Public Health. Schools and School Districts that are permitted to reopen for prioritized individual and cohorted students (K-12) or upon an approved waiver application (TK-12) must follow the Reopening Protocols for K-12 Schools and the Protocol for COVID-19 Exposure Management Plan in K-12 Schools, incorporated by reference as **Appendices T1 & T2**. K-12 Schools with a COVID-19 outbreak (3 or more cases within a 14-day period) must close for 14 days.

h) [Intentionally Omitted.]

- i) **Institutes of Higher Education.** Colleges and universities in Los Angeles County will not be able to resume all in-person academic instruction, at this time. Institutions may continue to offer in person training and instruction for essential workforce for required activities that cannot be accomplished through virtual learning. All other academic instruction must continue to be done via distance-learning as specified in the County's Protocols for Institutes of Higher Education incorporated by reference as **Appendix U**. Faculty and other staff may come to campus for the purpose of providing distance learning, and other activities related to the purposes above, as well as maintaining minimum basic operations. Limited activities may take place on the campus as defined in the County's Protocols for Institutes of Higher Education. The institution must comply with all relevant portions of the County's Protocols for Institutes of Higher Education to maximize safety for all employees, also noted in **Appendix U**.
- j) **Outdoor Malls, Shopping Centers, and Swap Meets** may remain open at up to 20% of overall mall or shopping center capacity. These establishments must conduct entrance metering of customers. Additionally, special hours should be instituted for seniors and others with chronic conditions or compromised immune systems. Food court dining areas and common areas located within an Outdoor Mall, Shopping Center or Swap Meet must remain closed to the public until further notice. Members of the public may not consume food or beverages on the premises. Restaurants may only offer food and beverages for takeout, drive thru or delivery. Outdoor seating is closed to the public. Outdoor Malls, Shopping Centers and Swap Meets must close between the hours of 10:00 PM–5:00 AM (PST). The entities identified in Paragraph 3(e) of this Revised Temporary Order may remain open during those hours in accordance with the limitations set forth in this Revised Temporary Order. The owner or operator must prepare, implement and





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post the required County Public Health Protocols for Shopping Center Operators, incorporated by reference as **Appendix E**.

- k) **Hotels, Motels and Shared Rental Units.** Hotels and lodging cannot accept or honor out-of-state reservations for non-essential travel, unless the reservation is for at least the minimum time period required for quarantine and the persons identified in the reservation will quarantine in the hotel or lodging entity until after that time period has expired. When the Regional Stay Home Order is in effect in a region, hotels and lodging can only offer accommodation for COVID-19 mitigation and containment measures, treatment measures, accommodation for essential workers, or providing housing solutions, including measures to protect homeless populations. The owner or operator must prepare, implement and post the required County Public Health Protocols for Hotels, Lodging and Short-Term Rentals, incorporated by reference as **Appendix P**.
- l) [Intentionally Omitted.]
- m) **Essential Retail.** Essential Retail Businesses are defined in Paragraph 18 of the Order, which is incorporated by reference into this Revised Temporary Order. Essential Retail Businesses, such as, Retail Food Markets, Gas Stations, Appliances, Electronics, Banks/Credit Unions, Pet Stores, Laundromats, Hardware, Automobile Dealerships, Auto Repair are open at 20% of maximum indoor capacity and following appropriate retail protocols. Stand-alone grocery stores where the principal business activity is the sale of food may operate at 35% of capacity (based on building code occupancy limits). All access to grocery stores and retail food markets must be strictly metered to ensure compliance with the limit on capacity. The sale of food, beverages, and alcohol for in-store consumption is prohibited. Grocery stores and retail food markets must comply with County Public Health Protocols for Grocery Stores and Retail Food Markets, incorporated by reference as **Appendix B-1**. Outdoor Certified Farmers Markets must comply with County Public Health Guidance for Certified Farmers Markets and limit occupancy to 35% of outdoor capacity.
- n) **Restaurants.** Restaurants and other food facilities that prepare and serve food are open but only for delivery, drive thru, and carry out. Indoor and outdoor onsite dining is not permitted. Outdoor seating is closed to the public. Restaurants may continue to offer delivery, drive thru and carry out between the hours of 10:00 PM – 5:00 AM (PST). Restaurants with a moderate risk or high risk restaurant permit



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issued by the County Public Health and other food facilities must follow the revised Public Health Protocols for Restaurants, incorporated by reference as **Appendix I**. Cafeterias, commissaries, and restaurants located within hospitals, nursing homes, or other licensed health care facilities may provide dine-in service, as long as Social (Physical) Distancing is practiced;

- o) **Breweries and Wineries.** Breweries and wineries are closed for in-person onsite food and beverage service. Breweries and wineries may remain open for production, manufacturing, and indoor retail operations at 20% of maximum indoor occupancy following County Public Health Retail Protocol, incorporated by reference as **Appendix B**. These establishments must close in-person operations between 10:00 PM – 5:00 AM (PST).
- p) **Childcare Facilities.** All childcare facilities, including those operating at schools, must operate under the LAC DPH Childcare Guidance and the following conditions: (1) Childcare must be carried out in stable cohorted groups of 12 or fewer ("stable" means the same twelve (12) or fewer children are in the same group each day); (2) Children shall not change from one group to another; (3) If more than one group of children is cared for at one facility, each group shall be in a separate room. Groups shall not mix with each other; (4) Childcare providers shall remain solely with one group of children.
- q) **Drive-In Movie Theaters / Drive-In Events.** Drive-In movie theaters and drive-in events are recommended to close. Those that remain open must adhere to the following conditions: All occupants of each car are members of the same household. Operators must follow County Public Health Drive-In Movie Protocol. The movie showing or event must end by 10:00 PM and remain closed until 5:00 AM (PST).
- r) **Libraries.** Libraries that are not on campuses of Institutes of Higher Education may remain open at 20% of maximum indoor capacity. Libraries may elect to continue curbside pick-up operations.
- s) **Swimming Pools.** Outdoor and indoor pools that serve members from more than one household are closed, except that outdoor pools that offer regulated lap swimming (one swimmer per lane) may remain open and drowning prevention classes, including swim lessons with certified instructors, are permitted indoors and outdoors. All gatherings at pool areas are prohibited. Must close for operations between the hours of 10:00 PM – 5:00 AM (PST).



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- t) **Places of Worship.** Places of Worship should engage in outdoor or remote faith-based services and other related activities for all attendees, especially those who are vulnerable to COVID-19 including older adults and those with co-morbidities, given the increased risk of community transmission of COVID-19 resulting from the unprecedented surge of new daily cases, hospitalizations, and premature deaths, as well as the severely reduced Intensive Care Unit (ICU) bed capacity. When carrying out virtual activities indoors, it is recommended that no more than 10 individuals participate in production and broadcast process; anyone participating in production and broadcast must follow infection control and physical distancing requirements. The number of persons on site (indoors or outdoors) at any time shall be reduced as needed to permit compliance with physical distancing and infection control requirements, as specified in the Social (Physical) Distancing Protocol (**Appendix A**), including but not limited to Places of Worship staff and attendees at any faith-based services maintaining a minimum of six feet between attendees from different households and that all attendees must wear a face covering or mask over both the nose and mouth at all times while in attendance and when walking near or past non-household members, among others. If drive-in outdoor services are offered, cars are directed to park at least 6 feet apart. The California Department of Public Health advises that "activities such as singing, and chanting negate the risk-reduction achieved through six feet of physical distancing" due to an increased likelihood for transmission from contaminated exhaled droplets. Consider practicing these activities through alternative methods (such as internet streaming) that ensure individual congregation members perform these activities separately in their own homes or alone in a separate room at the Place of Worship. Please review the State Industry Guidance for Places of Worship and Providers of Religious Services and Cultural Ceremonies [here](#). The Centers for Disease Control and Prevention recommends organizations consider temporarily suspending singing, chanting, or shouting, especially when indoors. If attendees choose to sing, chant, or shout, encourage them to continue wearing their masks while doing so and increase the distance between people to greater than 6 feet. The protocols set forth in **Appendix A** and in this paragraph 8(t) do not obligate and should not be read to, in any way, encourage Places of Worship to resume any in-person activity.

**9. Permitted Activities.** The following activities are considered Essential Activities, and are specifically permitted under this Revised Temporary Order:

- a) Engaging in activities or performing tasks important to the health and safety of family or household members (including pets), such as, visiting a health or



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- veterinary care professional, obtaining medical supplies or medication, visiting a physician or child's pediatrician for routine care, such as, well-child visits and vaccinations;
- b) Obtaining necessary services and supplies for family or household members, or delivering the same, such as, obtaining grocery items or necessary supplies from Essential Businesses for one's household or for delivery to others;
  - c) Performing work for or accessing businesses that are open, or to carry out Minimum Basic Operations for businesses that are closed or operating remotely.
  - d) Obtaining or accessing services from Essential Governmental Functions, such as, accessing court, social and administrative services, performing jury duty or complying with an order of law enforcement or court;
  - e) Caring for minors, the elderly, dependents, persons with disabilities, or other vulnerable persons;
  - f) Obtaining in-person behavioral health or substance use disorder support in therapeutic small group meetings, such as Alcoholics Anonymous or Narcotics Anonymous, provided that the gathering is outside and limited to 10 people or fewer and Social (Physical) Distancing is practiced.
  - g) Obtaining in-person faith-based counselling services where the service cannot reasonably be practiced remotely, provided that the gathering is outside and limited to 10 people or fewer and Social (Physical) Distancing is practiced.
  - h) [Intentionally omitted.]
  - i) Permitted activities include engaging in outdoor recreation activity (as an individual or household), in compliance with Social (Physical) Distancing requirements and wearing a face covering, subject to the following limitations:
    - i. Outdoor recreation activity at parks, trails, piers, and beaches, and other open spaces must comply with any access or use restrictions separately established by the Health Officer, government, or other entity that manages the area to reduce congestion and the resulting increase in risk of COVID-19 transmission. Individuals can engage in active recreation at beaches, parks, and trails by themselves or with members of their household; team sports and any gatherings are prohibited unless with members of only one



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household. Must close for operations between the hours of 10:00 PM – 5:00 AM (PST).

- ii. Shared outdoor facilities for recreational activities, including but not limited to golf courses, tennis, bocce and pickleball courts, children's playgrounds, shooting and archery ranges, equestrian centers, model airplane areas, community gardens botanical gardens, skate parks, and bike parks may remain open for individuals or members of a single household while following Social (Physical) Distancing requirements and wearing a face covering. All persons must comply with any access or use restrictions separately established by the Health Officer, government, or other entity that manages the area to reduce congestion and the resulting increase in risk of COVID-19 transmission. Must close for operations between the hours of 10:00 PM – 5:00 AM (PST).
- iii. Local public entities may elect to temporarily close certain streets or areas to automobile traffic, to allow for increased space for persons to engage in recreational activity permitted by and in compliance with Social (Physical) Distancing requirements specified in this Revised Temporary Order.

- j) **Participating in a Vehicle-Based Parade.** Wherever possible, vehicle parades should be canceled for the duration of this Order. Parades may only be held under the following conditions: The host of the Vehicle-Based Parade must comply with all local ordinances, traffic control requirements, and state and local laws. Only persons from the same household may occupy a vehicle. Further, the host of Vehicle-Based Parades must comply with County Public Health Vehicle-Based Parade Protocol, incorporate by reference as **Appendix G**. Vehicle-Based Parades may not occur during the hours of 10:00 PM – 5:00 AM (PST).
- k) Participating in an in-person political expression as long as the protest is held outdoors. Outdoor political expressive activities are permitted without a limit on attendees. Persons participating must wear a face covering or mask and maintain physical distancing of six (6) feet between persons or groups of persons from different households at all times, as well as observe the Department of Public Health Protocol for Public Demonstrations.

**10.** Pursuant to Sections 26602 and 41601 of the California Government Code and Section 101029 of the California Health and Safety Code, the Health Officer requests that the Sheriff and all chiefs of police in all cities located in the Los Angeles County Public Health Jurisdiction





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ensure compliance with and enforcement of this Order. The violation of any provision of this Order constitutes an imminent threat and menace to public health, constitutes a public nuisance, and is punishable by citation, civil penalty and injunction, fine or imprisonment.

11. This Order shall become effective at 11:59 PM (PST) on December 29, 2020 and will remain in effect for as long as the State Public Health Officer's Regional Stay At Home remains in effect in the Southern California Region.

**IT IS SO ORDERED:**



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**Muntu Davis, M.D., M.P.H.**  
Health Officer,  
County of Los Angeles

12/29/2020

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**Date**



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## **Appendices At-A-Glance**

All DPH protocols are available at: <http://www.publichealth.lacounty.gov/media/Coronavirus/>

**Appendix A:** Protocol for Social Distancing [Revised 12/29/2020]

**Appendix B:** Protocols for Retail Establishments Opening for In-person Shopping [Revised 12/6/2020]

**Appendix B-1:** Protocols for Grocery Stores and Retail Food Markets [Revised 12/9/2020]

**Appendix C:** Reopening Protocol for Warehousing, Manufacturing and Logistic Establishments [Revised 12/4/2020]

**Appendix D:** Protocols for Office Worksites [Revised 12/24/2020]

**Appendix E:** Protocols for Shopping Center Operators [Revised 12/27/2020]

**Appendix F:** [Rescinded on 12/29/2020]

**Appendix G:** Protocol for Vehicle-Based Parades [Revised 10/13/2020]

**Appendix H:** [Rescinded and Incorporated into Appendix R on 10/23/2020]

**Appendix I:** Protocol for Restaurants, Breweries and Wineries [Revised 12/11/2020]

**Appendix J:** Reopening Protocol for Music, Film, and Television Production [Revised 8/18/2020]

**Appendix K:** Reopening Protocol for Day Camps [Revised 11/28/2020]

**Appendix L:** Reopening Protocol for Gyms and Fitness Establishments [Revised 12/2/2020]

**Appendix M:** [Rescinded on 12/6/2020]

**Appendix N:** Protocol for Professional Sports Leagues and Facilities Opening for Training Sessions and Spectator-Free Events [Revised 12/12/2020]

**Appendix O:** Reopening Protocol for Campgrounds, RV parks and Cabin Rental Units [Revised 12/18/2020]

**Appendix P:** Reopening Protocol for Hotels, Lodging, and Short-Term Rentals [Revised 12/6/2020]

**Appendix Q:** [Rescinded on 12/6/2020]

**Appendix R:** [Rescinded on 12/6/2020]

**Appendix S:** [Rescinded 6/28/2020]

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**Appendix T1:** Reopening Protocols for K-12 Schools [Revised 11/28/2020]

**Appendix T2:** Protocol for COVID-19 Exposure Management Plan in K-12 Schools [Revised 11/28/2020]

**Appendix U:** Reopening Protocol for Institutes of Higher Education [Revised 12/2/2020]

**Appendix V:** [Rescinded on 12/6/2020]

